

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No. 8714 of 2015(O&M)

Date of decision: 22.04.2016

Angoori Devi

..... Petitioner

Versus

Jainendra Gurukul Panchkula

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.S.Toor, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for the respondent.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 27.11.2015 passed by the learned Civil Judge (Junior Division), Panchkula, vide which the order passed by the learned trial Court dated 06.12.2011 striking off the defence of the petitioner-defendant has been upheld.

2. Learned counsel for the petitioner contended that due to the negligence of the counsel for the petitioner in the

trial Court, the written statement could not be filed within 90 days. The petitioner is an innocent lady. She engaged Sh.Suresh Rohila, Advocate and the entire facts were disclosed to him. He got her signatures on the papers to file the written statement. But, the written statement was not filed by the counsel within 90 days and the defence of the petitioner was struck off vide impugned order dated 06.12.2011. He contended that the said order was challenged in the revision before this Court. But, the said revision was dismissed as withdrawn with liberty to approach the learned trial Court to recall the order. The application filed by the petitioner to recall the order has also been dismissed by the learned trial Court vide impugned order dated 27.11.2015. He contended that great prejudice has been caused to the petitioner due to the impugned order. He contended that the provisions under Order 8 Rule 1 of Code of Civil Procedure, 1908 (for short CPC) are not mandatory. Thus, he pleaded that the petitioner should be granted one opportunity to file the written statement.

3. On the other hand, learned counsel for the respondent contended that number of opportunities were granted to the petitioner to file the written statement. But, when the written statement was not filed, her defence was struck off. He further contended that the revision filed by the petitioner against that order was also got dismissed as

withdrawn. So, that order has attained finality and cannot be re-agitated in the present revision petition. He further contended that the impugned order was passed about five years back. The disposal of the suit has already been delayed. If, the petitioner is allowed to file the written statement, it will further delay the disposal of the case.

4. I have duly considered the aforesaid contentions.

5. There is no denial to the fact that the valuable rights of the petitioner are involved in the present suit as the respondent-plaintiff has filed the suit for physical possession of the land measuring about 160 sq. yards. The interest of justice requires that the fair opportunity should be granted to the petitioner to present her case. From the signatures of the petitioner on the affidavit, it appears that she is semi-literate lady. It has been specifically mentioned in the grounds of revision that the entire facts were disclosed to her counsel, who even got her signatures on the papers, but did not file the written statement within time. It is well settled principle of law that the party should not be made to suffer for the negligence of the counsel.

6. Moreover, the provisions of Order 8 Rule 1 CPC, prescribing the time limit to file the written statement are not mandatory. The Court may extend time for filing the written statement even beyond that period in order to avoid hardship and injustice to the party concerned. Reference can be made

to cases **Kailash vs. Nanhku and others,2005(2) RCR (Civil) 379** and **Mohammed Yusuf vs. Faij Mohammad and others, 2009(1) RCR (Civil) 633.**

7. I do not find any substance in the plea raised by learned counsel for the respondent that the order dated 06.12.2011 passed by the learned trial Court has attained finality. The earlier revision petition bearing CR No. 4415 of 2012 was dismissed as withdrawn as the petitioner has sought permission to approach the learned trial Court. Thereafter, the petitioner moved the application to the trial Court for recalling the order and the said application has been dismissed by the learned Civil Judge, Panchkula vide impugned order dated 27.11.2015. So, the previous revision was withdrawn by the plaintiff in order to avail the proper remedy available to her before the learned trial Court.

8. Learned counsel for the petitioner has stated that the written statement is already available on record of the learned trial Court. So, there is no question of any delay. The same is simply to be taken on record.

9. Thus, in view of my aforesaid discussion, the present revision petition is hereby allowed and the learned trial Court is directed to take on record the written statement already filed by the petitioner on payment of Rs. 10,000/- as costs. In view of the plea raised by learned counsel for the respondent-plaintiff as the case is already old one, the learned

trial Court is directed to make every possible endeavor to expedite the disposal of the case preferably within one year from the date of this order.

22.04.2016

S.khan

**(DARSHAN SINGH)
JUDGE**